IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2004

CORAM

THE HON'BLE Mr.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE N.V.BALASUBRAMANIAN

W.A.No.2690 of 2004
and
W.A.M.P.Nos.4972 & 7816 of 2004

Tamil Nadu Industrial Investment Corporation Ltd.,
Rep. by its Managing Director,
No.473, Anna Salai, Nandanam,
Chennai - 600 035. ..Appellant.

Vs.

1.Millenium Business Solutions Pvt., Limited,
rep. by its Managing Director,
No.1/9, Padmam Flats,
P.P.Rao Road,
Balaji Nagar,
Royapettah, Chennai - 14.

2.The Secretary to Government,
Department of Industries,
Fort St.George,
Chennai - 600 009. ..Respondents.

PRAYER: Appeal against the order of the learned single Judge dated 19.05.2004, passed in W.P.No.14013 of 2004, as stated therein.

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For Appellant : Mr. Jayesh B. Dolia
for M/s.Aiyar & Dolia
For Respondent -1 : Mrs.Nalini Chidambaram, Senior Counsel
for Mr.R.Ramesh. for R1
Mr. V. Raghupathy Govt. Pleader for R2

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J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This writ appeal is filed against the impugned order of the learned single Judge dated 19.05.2004 passed in W.P.No.14013 of 2004. We have perused the impugned order and the other papers available on record, and also heard the learned counsel for the parties. We are of the opinion that the impugned order cannot be sustained.

2. The prayer in the writ petition was for the issuance of a writ of mandamus directing the 2nd respondent in the writ petition (the present appellant), which is the Tamil Nadu Industrial Investment Corporation Limited (hereinafter referred to as TIIC) to accept the one time settlement offer made by the petitioner and to release the properties and fixed assets offered as collateral securities.

3. The writ petitioner is a private limited company registered under the Indian Companies Act and is engaged in the business of Software Development Projects. A term loan of Rs.2.60 crores was sanctioned to the writ petitioner-company by the TIIC vide sanction letter dated 30.04.2001for a Software Development Project.

4. It was alleged in paragraph-11 of the affidavit filed in support of the writ petition that petitioner could not pay the dues to the TIIC as per the time schedule because of the unforeseen constraints in the market, as witnessed everywhere due to the global recession, and because of that the writ petitioner could not earn adequate revenues to repay the loan, since it was in its early phase of consolidation. TIIC issued a foreclosure notice on 16.07.2003 demanding the petitioner to settle the entire amount of principal and interest, failing which it will proceed with the auctioning of the collateral properties.

5. It is alleged that the petitioner came forward to raise funds by disposing of the properties offered as collateral securities, and its Managing Director presented a proposal to TIIC for one time settlement. The petitioner further alleged that it offered a proposal to pay Rs.2 crores against the release of all the collateral securities, and was awaiting for the approval and confirmation from TIIC. The petitioner also alleged that this proposal of one time settlement of Rs.2 crores against the release of collateral properties has not been considered by the TIIC till date. The petitioner prayed for re-scheduling of the repayment of the loan and interest.

6. Before the learned single Judge, the learned counsel for the writ petitioner, Mrs.Nalini Chidamabaram contended that a third party is willing to purchase one item of the property, which is offered as collateral security situate at Ponneri Taluk for a sum of Rs.2 crores. She also pointed out that apart from the above item of the property, a residential house situated at Royapettah,

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Chennai-14 is also offered as security to TIIC. The learned single Judge in his impugned order in paragraph –6 observed :

> "If that is so, if the petitioner brings any third party to purchase one item of the property, either for Rs.2 crores or any amount higher than that, as and when the sum of Rs.2 crores is deposited either directly by the petitioner or by the proposed purchaser, the 2nd respondent shall release the said property situates at Ponnery Taluk from the guarantee offered by the petitioner. As regards the further grievance of the petitioner is concerned with regard to one time settlement, the 2nd respondent is directed to consider the request of the petitioner favourably, if the above said amount of Rs.2 crores is paid."

7. In our considered opinion it is not proper for the Court to interfere in such matters relating to recovery of loans. Such matters are contractual in nature and writ jurisdiction is not the proper remedy for this. A writ lies when there is an error of law apparent on the face of the record, or there is violation of law. No writ lies merely for directing one time settlement or for directing re-scheduling of the loan or for fixing instalments in connection with the loan. It is only the bank or the financial institution which granted the loan which can re-schedule it or fix one time settlement or grant instalments. The Court has no right under Article 226 of the Constitution to direct grant of one time settlement or for re-scheduling of the loan, or to fix instalments.

8. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for 'any other purpose'. However, by judicial interpretation the words 'any other purpose' have been interpreted to mean the enforcement of any legal right or performance of any legal duty, vide Calcutta Gas Co. Vs. State of West Bengal, AIR 1962 SC 1044. In the present case, the writ petitioner has really prayed for a mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In our opinion, no such mandamus can be issued in this case, and hence the writ petition should not have been entertained. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party against whom the mandamus is sought

9. In Bihar Eastern Gangetic Fishermen Co-operative Society Ltd., Vs. Sipahi Singh, AIR 1977 SC 2149 (vide para –15) the Supreme Court observed:

> "There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that

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mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See Lekhraj Satramdas Lalvani Vs. Deputy Custodian-cum-Managing Officer, (AIR 1966 SC 334 = 1966 (1) SCR 120), Dr.Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College (AIR 1962 SC 1210), and Dr.Umakant Saran Vs. State of Bihar (AIR 1973 SC 964). In the instant case, it has not been shown by respondent No.1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No.1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same".

10. In M/s. M.M.Accessories, Jogi Ram Puri Road, Naziabad and Another Vs. M/s.U.P. Financial Corporation, Kanpur and Another (2002 (46) Allahabad Law Reporter 261), a Division Bench of the Allahabad High Court, following the judgment in Bihar Eastern Gangetic Fishermen Co-operative Society Ltd (supra) observed:

"Therefore, there must be legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The petitioners have not been able to show that there is any statute or rule having the force of law which casts a duty on the UPFC to accept the proposal of one time settlement made by a borrower whereunder he has given his own terms. It is important to note that at the time when the loan was disbursed to the petitioners, a contract was entered into by them which provided for the rate of interest and mode and manner of payment. The amount of instalment and the date by which it had to be paid was also mentioned therein. The UPFC is not acting contrary to the terms of the contract which has been entered into between the parties. What the petitioners want now is that their proposal for one time settlement which contains terms advantageous to them, specially a rate of interest lesser than what they had agreed upon at the time of entering into the contract and disbursement of the loan, be accepted. The State Financial Corporations Act, which governs the working of the UPFC, does not contain any provision for entering into a one time settlement. A Court cannot issue any direction to a party to enter into a compromise or settlement. By the very nature of things a settlement involves consent and it is a voluntary act of the party. In a matter where a creditor is enforcing its liability upon the debtor, the debtor has no legal right to claim that the claim be settled on favourable terms proposed by him whereby the claim of the creditor is reduced. Therefore, in our opinion, the prayer made by the petitioners that this Court should issue a writ of mandamus to the respondents to accept the proposal of one time settlement made

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by them cannot be granted as it does not come within the principles on which a writ of mandamus can be issued under Article 226 of the Constitution.

Which particular course of action should be taken by the Corporation, would depend upon a variety of factors. It is likely that the revival of an industrial concern may be in larger public interest. By way of example, if the industrial concern is employing a large work force, its closure may throw a large number of persons out of employment. The industrial concern may be situated in a backward area which the Government wants to develop and its closure may have a serious adverse impact as it may deter other entrepreneurs in setting up industry in that area. It may be carrying on a business which is of public utility and its closure may adversely affect a large cross section of people. In these types of cases, the Corporation, having regard to the public interest involved, may enter into a settlement so that the industrial concern may not be closed and the production activity may go on. There may be cases where the nature of the activity of the industrial concern may not be of such a character and its closure may not have any adverse impact of any significance. The need to enter into a settlement may also depend upon the facts as to how best the money of the Corporation can be retrieved. If the industrial concern has valuable land or building or machinery, its sale may give a sizeable amount. However, if the condition of the industrial unit is such where sale of its unit or hypothecated property may not give sufficient money, it may be prudent to enter into a settlement. The human element also cannot be ignored altogether. The unit may be substantially damaged on account of some natural calamity like earthquake, flood or fire or calamity falling upon the main person running the industrial concern like death or serious ailment. In such a situation the Corporation, taking a humanitarian view, may enter into a settlement. These are matters to be examined and determined by the experts of the Corporation as to what will be the ideal course to be adopted in a given case. The Courts have neither the expertise nor the knowledge to go into all these questions and then to examine why in one case the offer of one time settlement was accepted and why in another case it was refused. The exact idea of the nature and position of the industrial concerns can never be had by the affidavits filed by the parties. This will require an inspection of the spot, the assessment of the valuation of the land, building and machinery and a host of other factors. It is well-nigh impossible for the Courts to enter into such kind of exercise in proceedings under Article 226 of the Constitution. It is also noteworthy that if a prayer is entertained on the part of a defaulting unit to compel or direct the Corporation to enter into one time settlement on the terms proposed by it, then a profit making industrial concern which is capable of paying its dues as per the terms of the agreement entered into by it, would also like to get a one time settlement in his favour. Who would not like to get his liability reduced and pay less

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than what he is liable to pay under the contract executed by him?"

11. In the present case no error of law or violation of law has been pointed out by the writ petitioner. As observed by a Division Bench of this Court in Rama Muthuramalingam Vs. Deputy Superintendent of Police, Tiruvarur District & Others (2004 (5) CTC 554) the Court should exercise judicial restraint and not interfere with the matters which do not pertain to its proper domain.

12. In Haryana Financial Corporation and another Vs. M/s. Jagdamba Oil Mills and another (JT 2002 (1) SC 482) a 3 Judges Bench of the Supreme Court set aside the decision of the 2 Judges Bench of the Supreme Court in Mahesh Chandra Vs. Regional Manager, UPFC (JT 1992 (2) SC 326) and observed:

> "While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand on the way of a deserving borrower getting financial assistance."

13. It was further held in Haryana Financial Corporation Case (supra) that :

> "The relationship between the corporation and the borrower is that of creditor and debtor. That basic feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization which is the intended object can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money. As was rightly observed in Gem Cap's Case - JT 1993 (2) SC 226 (supra), promoting industrialization does not serve public interest if it is at the cost of public funds. It may amount to transferring public money to private account."

14. Mrs.Nalini Chidambaram, learned counsel for the 1st respondent/company relied upon the decision of the Supreme Court in

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Gajraj Jain Vs. State of Bihar and Others ((2004) 7 SCC 151). We have carefully perused the above decision and we find that it has got no application to the facts or the questions involved in the present case. She has also relied on the decision of the Supreme Court in Chairman and Managing Director, SIPCOT, Madras and Others Vs. Contromix Pvt. Ltd., and another ((1995) 4 SCC 595). That decision was passed relying upon the decision in Mahesh Chandra's Case (supra), which has been set aside by a larger Bench of the Supreme Court in Haryana Financial Corporation Case (supra). Hence, that decision can be of no help to the 1st respondent-Company.

15. In M/s.M.M.Accessories Vs. M/s.U.P.Financial Corporation, 2002 (46) Allahabad Law Reporter 261 it has been held by the Allahabad High Court (per G.P.Mathur, J.) that there is no right vested with anyone to get a direction from the court for one time settlement. It is only the Corporation or the financial institution which granted the loan which can grant one time settlement, if it so chooses, but the Court cannot compel it to do so.

16. A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.

17. For the reasons stated above, this writ appeal is allowed and the impugned order passed in W.P.No.14013 of 2004 is set aside. Consequently, connected miscellaneous petitions are closed.

18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not on mere sympathy or compassion. No doubt, there may be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind.

Sd/
Asst.Registrar

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Judgment in
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